

DEPARTMENT OF STATE REVENUE

FIRST SUPPLEMENTAL LETTER OF FINDINGS NUMBER: 04-980137

**Collection and Remittance of Sales Tax
For The Period: June through October 1997**

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

I. Sales Tax: Collection and Remittance

Authority: IC 6-2.5-2-1; IC 6-2.5-6-10

The taxpayer argues that it does not have to collect sales tax for the state.

STATEMENT OF FACTS

The taxpayer sent in Indiana Sales and Use Tax Return forms (Form ST103H) marked "n/a"-- for not applicable. The taxpayer in May of 1997 sent the Department of Revenue a letter to notify the Department that the taxpayer "has never collected Indiana Sales Tax" and that it "cannot afford to calculate, collect, segregate . . . Sales Tax without just compensation." The taxpayer in that letter goes on to argue that Article I, Section 21 of the State of Indiana's Constitution demands "just compensation" for the collecting and remitting of sales tax.

I. Sales Tax: Collection and Remittance

DISCUSSION

A telephone hearing was scheduled for Wednesday, September 23, 1998, but the taxpayer did not

telephone. A Letter of Finding was issued based upon the existing file, which included numerous letters/briefs from the taxpayer. The taxpayer notified the Department, in a letter dated October 26, 1998, that it did not receive notification of the telephone hearing in a timely manner. Due to the taxpayer's allegation of untimely notice, the Department granted the taxpayer a rehearing.

The Department scheduled the rehearing for November 16, 1998. The notification of that rehearing was mailed (certified) to two (2) post office box addresses of the taxpayer. The taxpayer notified the Department days before the rehearing that the rehearing date was unacceptable. The taxpayer also sent in a letter, received by the Department on November 17, 1998, stating that it wanted at least sixty days before another hearing would be scheduled. The Department sent certified notification to the taxpayer that the rehearing would not be delayed sixty (60) days. However, the Department granted the taxpayer a rescheduled rehearing for December 2, 1998. On Monday, November 30, 1998, the Department received a hand delivered letter (dated November 27, 1998) from the taxpayer stating that "...your proposed scheduling of a telephonic discussion for 10:00 a.m. on Wednesday, December 2, 1998, is not acceptable."

The taxpayer does not give any good cause for why the date was not acceptable. Instead, the taxpayer states that the Department must answer various questions before it will partake in the rehearing. It should be noted that the purpose of a hearing is for fact gathering. The hearing allows the taxpayer to establish its objections to the assessment and the reasoning for the objections. The questions that the taxpayer demands answers to obfuscate the real issue—namely, that the taxpayer bears the burden of proof. The taxpayer has created a "straw man," since the obstacles that it claims exist prior to any rehearing are non-existent. The hearing process is informal, and is simply a means for the taxpayer to make its case known to the Department. It is not a forum for the taxpayer to ask rhetorical questions (e.g., Is it the Department's position and practice to violate due process?) and demand answers from the Department. The taxpayer is fully aware that the Department has upheld its due process rights. That the due process argument is a straw man argument on the taxpayer's part is evidenced by the fact that it was invoked by the taxpayer even before a hearing was scheduled by the Department. The taxpayer conflates the procedural with substantive—since the Department does not agree with the taxpayer's argument (*viz.*, the collection of sales tax is unconstitutional), then per the taxpayer, the Department must be violating the taxpayer's due process. This is a non sequitur. The Department has made numerous attempts to have the taxpayer have a hearing; the Department has made the taxpayer aware of its administrative rights and its post-administrative rights (namely, Tax Court). It is the taxpayer, not the Department, which refuses to have a hearing.

The Department, under the Indiana Code and the Indiana Administrative Code (*See*, IC 6-8.1-5-1) has the right to set the hearing date and time, and the Department has the right to determine whether a continuance or rescheduled hearing date will be granted. The Department of Revenue, per the Indiana Administrative Code, "shall set a date for a hearing of the protest" and "extensions of time, continuances and adjournments may be granted at the discretion of the department upon a showing of

good cause.” 45 IAC 15-5-3. The IAC goes on to state “[I]f a taxpayer or its representative fails to appear at a hearing without securing a continuance, the department will decide the issues on the best evidence available to the department.”

The taxpayer did not secure a continuance or an extension of time from the Department. And despite the taxpayer’s elision, the fact of the matter is that the Department has now scheduled three different hearing dates for the taxpayer. Therefore, this supplemental letter of finding is written based upon the file and the correspondence therein. This supplemental letter of finding hereby incorporates the original Letter of Finding issued by the Department.

FINDING

The taxpayer’s protest is denied.